



**6712-01**

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 54**

**[WC Docket No. 10-90, WT Docket No. 10-208; FCC 18-124]**

**Connect America Fund; Universal Service Reform – Mobility Fund**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes modifying the timeframe for collecting acceptable speed test data in support of Mobility Fund II eligibility challenges, such that acceptable data may be collected at any time on or after February 27, 2018, until November 26, 2018.

**DATES:** Comments are due **[INSERT DATE 10 days after date of publication in the Federal Register]**, and reply comments are due by **[INSERT DATE 15 days after date of publication in the Federal Register]**.

**ADDRESSES:** You may submit comments, identified by WC Docket No. 10-90 and WT Docket No. 10-208, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <https://www.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov), phone: 202-418-0530 or TTY: 202-418-0432.

**FOR FURTHER INFORMATION CONTACT:** Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, Audra Hale-Maddox, at (202) 418-0660.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM), WC Docket No. 10-90 and WT Docket No. 10-208, FCC 18-124, adopted on August 14, 2018, and released on August 21, 2018. The complete text of this document is available for public inspection and copying from 8 a.m. to 4:30 p.m. Eastern Time (ET) Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12<sup>th</sup> Street S.W., Room CY-A257, Washington, DC 20554. The complete text is also available on the Commission's website at <http://wireless.fcc.gov>, or by using the search function on the ECFS web page at <http://www.fcc.gov/cgb/ecfs/>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

#### **Comment Filing Procedures**

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <https://www.fcc.gov/ecfs/filings>. Filers should follow the instructions provided on the website for submitting comments. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket numbers WC Docket No. 10-90 and WT Docket No. 10-208.
- Paper Filers: Parties who choose to file by paper must file an original and three copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's

Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554.  
The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Dr., Annapolis Junction, Annapolis MD 20701.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

### **Ex Parte Presentations**

Pursuant to § 1.1200(a) of the Commission's rules, this NPRM shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission

staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's ex parte rules.

### **Paperwork Reduction Act**

The NPRM does not contain any new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). In addition, therefore, it does not contain any new, modified, or proposed information collection burden for business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

### **Initial Regulatory Flexibility Certification**

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for a notice-and-comment rulemaking proceeding, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission prepared Initial Regulatory Flexibility Analyses (IRFAs) in connection with the USF/ICC Transformation FNPRM, 76 FR 78384, December 16, 2011, the 2014 CAF FNPRM, 79 FR 39195, July 9, 2014, and the MF-II FNPRM, 82 FR 13413, March 13, 2017, (collectively, MF-II FNPRMs). The Commission sought written public comment on the proposals in the MF-II FNPRMs and comments on the IRFAs and

Supplemental IRFA. The Commission included Final Regulatory Flexibility Analyses (FRFAs) in connection with the CAF Report & Order and Further Notice, 79 FR 39163, July 9, 2014, the MF-II Report & Order, 82 FR 15422, March 28, 2017, the MF-II Challenge Process Order, 82 FR 42473, September 8, 2017, and the MF-II Second Order on Reconsideration, 83 FR 17934, April 25, 2018 (collectively, the MF-II Orders). Therefore, the Commission certifies that the requirements of the Notice of Proposed Rulemaking will not have a significant economic impact on a substantial number of small entities.

## **I. SYNOPSIS**

On August 21, 2018, the Federal Communications Commission (“Commission”) released an Order, Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 18-124. A summary of the final actions from that document is published elsewhere in this issue of the Federal Register. In that document, the Commission extended the previously announced deadline for the close of the Mobility Fund Phase II (MF-II) challenge window by an additional 90 days until November 26, 2018, during which period challengers may submit speed test data in support of a challenge. The Commission adopted this extension to ensure that interested parties can initiate and submit speed test data for areas they wish to challenge. Given this extension, the Commission proposed to make modifications to the speed test data specifications regarding the relevant timeframes for valid speed tests.

## **II. NOTICE OF PROPOSED RULEMAKING TO MODIFY THE DATA TIMING REQUIREMENTS**

1. In the MF-II Challenge Process Order, the Commission stated that speed test measurements taken before the submission of updated coverage maps might not accurately reflect current network deployment and accordingly adopted a requirement that speed test measurements from challengers must be taken after the publication of the initial eligible areas map and within six months of the scheduled close of the challenge window. Similarly, the Commission stated it would only accept measurements from challenged parties that were collected after the publication of the initial eligibility map and within six months of the scheduled close of the response window.

2. To ensure that the extension of the challenge filing deadline does not inadvertently create hardships for those challengers that have already conducted speed tests, and to provide similar testing parameters for both the challengers and the challenged parties, the Commission tentatively concludes that it would be in the public interest to modify the initially-adopted requirements that speed test data be collected within six months of the scheduled close of the relevant challenge or response window. Accordingly, the Commission proposes to accept speed test data in support of challenges collected at any time on or after February 27, 2018, the date of the publication of the map of presumptively eligible areas, through the new close of the challenge window, November 26, 2018. This would provide challengers with an additional three months (for a total of nine months) to conduct speed tests. Consistent with the MF-II Challenge Process Order's generally parallel standards for challengers and respondents, the Commission proposes to make a corresponding change to afford respondents at least the same amount of time as challengers to collect data. Accordingly, a respondent would have at least nine months to collect speed test data of their own network, and respondent speed tests collected on or after April 29, 2018, would be considered valid.

3. The Commission tentatively concludes that the extension of the filing deadline warrants a modification of the current data timing requirements for challengers and respondents. The Commission tentatively concludes that modifying these requirements will serve the public interest by preventing challengers from having to repeat speed tests, and it should permit more effective implementation of Commission policy. In contrast, the Commission tentatively concludes that failing to modify this timing requirement would prohibit challengers from using the speed tests conducted between February 27 and May 28 (i.e., tests conducted more than six months before the new November 26 deadline), thereby forcing such challengers to engage in more testing than they would otherwise have had to conduct. Further, the Commission believes that providing respondents (i.e., the “challenged parties”) with a similar data timing requirement appropriately balances the interests of respondents with the Commission’s interest in receiving data collected recently, after the one-time 4G LTE data collection that initiated the

challenge process. The Commission seeks comment on its tentative conclusions and these proposed modifications of the timing requirements.

FEDERAL COMMUNICATIONS COMMISSION

Marlene Dortch,

Secretary.

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